

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GENE ALLEN ZARITSKY,

Plaintiff,

vs.

TROY JOHNSON, et al.,

Defendants.

Case No. 2:13-cv-02084-JCM-NJK

ORDER

Plaintiff, who is in the custody of the Nevada Department of Corrections, has submitted an amended civil rights complaint pursuant to 42 U.S.C. § 1983 (#4) and an application to proceed in forma pauperis (#1). The court finds that plaintiff is unable to prepay the full filing fee in this matter, but plaintiff will need to pay the filing fee through monthly installments.

Plaintiff has filed a motion for appointment of counsel (#9). “There is no constitutional right to appointed counsel in a § 1983 action. However, in ‘exceptional circumstances,’ a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915[(e)(1)]. To decide whether these exceptional circumstances exist, a district court must evaluate both the likelihood of success on the merits and the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (internal quotations and citations omitted), withdrawn on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en banc). After reviewing the amended complaint, the court finds that appointment of counsel is not warranted.

1 A request for an evidentiary hearing (#10) is associated with the motion for appointment of
2 counsel. The court denies this request as moot because the court is denying the motion for
3 appointment of counsel.

4 Defendant has filed a motion for enlargement of time (#13) to file the status report, because
5 the settlement conference was scheduled after the due date for the report. The court grants this
6 motion. The hearing has been held and defendant has filed the status report (#16)

7 IT IS THEREFORE ORDERED that plaintiff's motion for appointment of counsel is
8 **DENIED.**

9 IT IS FURTHER ORDERED that plaintiff's request for evidentiary hearing (#10) is
10 **DENIED** as moot.

11 IT IS FURTHER ORDERED that defendant's motion for enlargement of time (#13) is
12 **GRANTED.**

13 IT IS FURTHER ORDERED that:

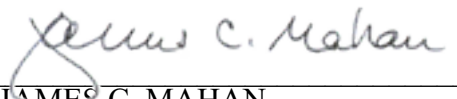
- 14 1. Plaintiff's application to proceed in forma pauperis (#1) is **GRANTED**. Plaintiff
15 shall not be required to pay an initial installment of the filing fee. If this action is
16 dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).
- 17 2. The movant herein is permitted to maintain this action to conclusion without the
18 necessity of prepayment of any additional fees or costs or the giving of security
19 therefor. This order granting leave to proceed in forma pauperis shall not extend to
20 the issuance of subpoenas at government expense.
- 21 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections shall pay
22 to the clerk of the United States District Court, District of Nevada, 20% of the
23 preceding month's deposits to plaintiff's account (inmate #39967), in the months that
24 the account exceeds \$10.00, until the full \$350.00 filing fee has been paid for this
25 action. The clerk of the court shall send a copy of this order to the finance division
26 of the clerk's office. The clerk shall also send a copy of this order to the attention of
27 the Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box
28 7011, Carson City, NV 89702.

- 1 4. The clerk shall electronically serve a copy of this order, a copy of the court's
2 screening order (#5) and a copy of plaintiff's amended complaint (#4) on the Office
3 of the Attorney General of the State of Nevada, attention Kat Howe.
- 4 5. Subject to the findings of the screening order (#5), within **twenty-one (21) days** of
5 the date of entry of this order, the Attorney General's Office shall file a notice
6 advising the court and plaintiff of: (a) the names of the defendants for whom it
7 accepts service; (b) the names of the defendants for whom it does not accept service,
8 and (c) the names of the defendants for whom it is filing last-known-address
9 information under seal. As to any of the named defendants for which the Attorney
10 General's Office cannot accept service, the Office shall file, under seal, the last
11 known address(es) of those defendant(s) for whom it has such information.
- 12 6. If service cannot be accepted for any of the named defendant(s), plaintiff shall file a
13 motion identifying the unserved defendant(s), requesting issuance of a summons, and
14 specifying a full name and address for the defendant(s). For the defendant(s) as to
15 which the Attorney General has not provided last-known-address information,
16 plaintiff shall provide the full name and address for the defendant(s).
- 17 7. If the Attorney General accepts service of process for any named defendant(s), such
18 defendant(s) shall file and serve an answer or other response to the complaint within
19 sixty (60) days from the date of this order.
- 20 8. Henceforth, plaintiff shall serve upon defendant(s) or, if an appearance has been
21 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
22 document submitted for consideration by the court. Plaintiff shall include with the
23 original paper submitted for filing a certificate stating the date that a true and correct
24 copy of the document was mailed to the defendants or counsel for the defendants. If
25 counsel has entered a notice of appearance, the plaintiff shall direct service to the
26 individual attorney named in the notice of appearance, at the address stated therein.
27 The court may disregard any paper received by a district judge or magistrate judge
28 which has not been filed with the Clerk, and any paper received by a district judge,

1 magistrate judge, or the Clerk which fails to include a certificate showing proper
2 service.

3 IT IS SO ORDERED.

4 DATED: January 21, 2015.

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7 JAMES C. MAHAN
8 United States District Judge
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